

151 FERC ¶ 61,014
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

Duke Energy Carolinas, LLC
Duke Energy Florida, Inc.
Duke Energy Progress, Inc.

Docket No. ER15-523-001

ORDER ACCEPTING PROPOSED TARIFF AMENDMENTS SUBJECT TO
COMPLIANCE

(Issued April 7, 2015)

1. On December 1, 2014, Duke Energy Carolinas, LLC (Duke Energy Carolinas), Duke Energy Florida, Inc. (Duke Energy Florida), and Duke Energy Progress, Inc. (Duke Energy Progress) (collectively, Duke Southeast Utilities) filed proposed amendments to their Joint Open Access Transmission Tariff (OATT), pursuant to section 205 of the Federal Power Act (FPA)¹ and the Commission's Rules of Practice and Procedure.² Duke Southeast Utilities propose a five-minute submission window for transmission service requests and a lottery system to allocate transmission capacity when insufficient transfer capability exists to accommodate all transmission requests with otherwise equivalent priorities made within the submission window.

2. As discussed below, the Commission accepts the proposed amendments to sections 13.2 (Reservation Priority), 28.4 (Secondary Service), and 30.2 (Designation of New Network Resource) of the Joint OATT, as modified below, to become effective on June 1, 2015, as requested, subject to a compliance filing. In addition, the Commission accepts the proposed revisions to Schedule 9 (Loss Compensation Service), effective April 1, 2015, as requested.

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 35.13 (2014).

I. Summary of Filing and Deficiency Letter Response

3. Duke Southeast Utilities state that they are implementing updated Open Access Same-time Information System (OASIS) software that triggers the need to make several modifications to their Joint OATT.³ Duke Southeast Utilities explain that, currently, only Duke Energy Carolinas has a five-minute submission window for transmission service requests during which requests with otherwise equivalent priorities are deemed to have been submitted simultaneously and transmission capacity is allocated on a *pro rata* basis. Now, with the rollout of new OASIS software, Duke Southeast Utilities propose a five-minute simultaneous submission window for transmission service requests and a lottery system to allocate transmission capacity if sufficient transfer capability is not available to meet all of the relevant transmission service requests for all three utilities (Duke Energy Carolinas, Duke Energy Progress, and Duke Energy Florida).⁴

4. Duke Southeast Utilities assert that the lottery approach is more suitable than the current *pro rata* method used by Duke Energy Carolinas given the functionality of the new software.⁵ Duke Southeast Utilities explain that the lottery system will award the full amount of requested transmission capacity to the “winning” transmission customer, determined through a software-generated random selection process. Duke Southeast Utilities contend that this method provides a fair, non-discriminatory method of allocation and mitigates the possibility of gaming.⁶

5. Duke Southeast Utilities state that the implementation of this proposal requires changes to sections 13.2 (Reservation Priority), 28.4 (Secondary Service), and 30.2 (Designation of New Network Resource) of the Joint OATT. In their December 1, 2014 filing, Duke Southeast Utilities state that the software is expected to be in place for Duke Energy Carolinas on January 13, 2015, while the implementation for Duke Energy Florida and Duke Energy Progress would “trail behind by several weeks.”⁷

³ Transmittal at 1.

⁴ *Id.* at 1-2.

⁵ *Id.* at 2.

⁶ *Id.*

⁷ *Id.*

6. Duke Southeast Utilities also propose to revise Schedule 9 (Loss Compensation Service) of the Joint OATT to remove a provision⁸ that Duke Southeast Utilities state applies only to Duke Energy Carolinas and is no longer necessary or applicable due to the new software, which will calculate losses using a daily approach.

7. On January 30, 2015, Commission staff issued a deficiency letter requesting additional information. On February 6, 2015, Duke Southeast Utilities filed a response (Deficiency Response).

8. In their Deficiency Response, Duke Southeast Utilities offer additional clarification regarding their proposed tariff amendments. With regard to how the random lottery will function, Duke Southeast Utilities state that if the OASIS software detects two or more otherwise equivalent requests having been submitted within the five-minute window, it will randomly select a request and process it, and then continue to process requests randomly, taking into account how much capacity has been allocated.⁹ Duke Southeast Utilities state that they are purchasing proprietary OASIS software from a third-party vendor and do not know the exact programming tool used to ensure randomness. However, they state that the approach should be similar to the approach proposed by the Mid-Continent Area Power Pool (MAPP), which the Commission approved in 2008 stating:

[u]nder MAPP's proposed lottery procedure, all customers with identical duration, pre-confirmation status and price status will be treated on an equal basis. As MAPP explains in its answer, when a tie occurs, a customer from the set of customers tied for capacity will be selected at random and its

⁸ Schedule 9 discusses the calculation of capacity and energy losses associated with the use of transmission facilities, other than distribution facilities, in the Duke Energy Carolinas zone. The sentence Duke Southeast Utilities propose to remove provides as follows: "However, in no event shall such determination result in the Transmission Provider being undercompensated after any hour." *Id.*

⁹ Deficiency Response at 3. Duke Southeast Utilities state that the Joint OATT reflects the reservation priority system in the *pro forma* OATT (i.e., bid price, duration, and pre-confirmation status are taken into account in prioritizing transmission service requests). *Id.* at 2.

request processed. This procedure will be repeated until all requests have been processed.¹⁰

9. In addition, in response to Commission staff's question of whether it is Duke Southeast Utilities' intention that the proposed tariff amendments would become effective once Duke Southeast Utilities updated certain business practices, Duke Southeast Utilities state that was not their intention. Rather, Duke Southeast Utilities state that their original proposal was for the tariff amendments to become effective January 13, 2015, which would allow for Duke Southeast Utilities to operate in one manner until certain changes were made to the business practices. Duke Southeast Utilities state that they "will instead simply seek a June 1, 2015 effective date and eliminate references to the Business Practices as shown in the Marked Tariff Attachment."¹¹ Duke Southeast Utilities state that if the requisite software has not been installed by June 1, 2015, the effective date would be changed through another tariff filing.¹²

10. In addition, Duke Southeast Utilities state that the effective date of the proposed change to Schedule 9 does not appear to be at issue and they are now requesting an April 1, 2015 effective date for that tariff record.¹³

II. Notice of the Filing and Responsive Pleadings

11. Notice of Duke Southeast Utilities' December 1, 2014 filing was published in the *Federal Register*, 79 Fed. Reg. 73,062 (2014), with interventions and protests due on or before December 22, 2014. North Carolina Electric Membership Corporation filed a timely motion to intervene. Seminole Electric Cooperative, Inc. (Seminole) filed a timely motion to intervene and protest. On January 6, 2015, Duke Southeast Utilities filed a motion for leave to answer and an answer.

12. Notice of Duke Southeast Utilities' Deficiency Response was published in the *Federal Register*, 80 Fed. Reg. 7858 (2015), with interventions and protests due on or before February 27, 2015. None was filed.

¹⁰ *Id.* (citing *Mid-Continent Area Power Pool*, 123 FERC ¶ 61,177 (2008) (MAPP)).

¹¹ *Id.* at 4.

¹² *Id.* at 2 n.3.

¹³ *Id.* at 4 n.4.

III. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Duke Southeast Utilities' answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Protest

15. Seminole claims that both Duke Energy Florida and Florida Power & Light Company (Florida Power) have used the *pro rata* approach under which Seminole is guaranteed to acquire at least some capacity. Seminole states that Duke Energy Florida has not cited any change in circumstance to explain why it is switching from the *pro rata* approach. Further, Seminole states that the proposed changes are disruptive and unjustified.¹⁴

16. Seminole asserts that what the non-Florida Duke utilities do should not affect how transmission capacity is allocated in Florida. Seminole contends that shifting from a *pro rata* approach to a lottery system will make it more difficult for customers like Seminole, who rely on both Duke Energy Florida and Florida Power for transmission service to member load, to plan coherently.¹⁵ Seminole asks that the Commission reject Duke Southeast Utilities' filing, or set the matter for hearing.

2. Answer

17. In response to the concerns raised by Seminole, Duke Southeast Utilities argue that the adoption of a lottery approach by Duke Energy Florida is just and reasonable regardless of what method Florida Power, or any other neighbor of Duke Energy Florida, has adopted. Duke Southeast Utilities explain that they seek to establish submission windows for Duke Energy Florida in order to align the approach to transmission

¹⁴ Seminole Protest at 3.

¹⁵ *Id.* at 3-4.

reservation periods across all three utilities because a uniform approach is more efficient than using different methods among the utilities.¹⁶ In addition, Duke Southeast Utilities state that, prior to submitting the instant filing, Duke Energy Florida had not established submission windows, thus, needed no allocation system.¹⁷ Duke Southeast Utilities explain that without submission windows the requests are treated on a first-come, first-served basis.¹⁸

18. Duke Southeast Utilities explain that Order No. 890¹⁹ provides that “the transmission provider is in the best position to determine an allocation that is appropriate to its system and that cannot be gamed.”²⁰ Duke Southeast Utilities further explain that in Order No. 890-A the Commission elaborated by stating:

While the Commission could remove transmission provider discretion in this area by adopting a single, one-size-fits-all approach, such as a mandatory *pro rata* distribution methodology, this approach may not produce the best result in all cases. As the very precedent cited by petitioners acknowledges, every allocation methodology has advantages and disadvantages. We reiterate our belief that transmission providers are in the best position to determine which allocation mechanism works best for their systems.²¹

19. Duke Southeast Utilities state that, as transmission providers, they are in the best position to determine an allocation methodology, not Seminole. Further, Duke Southeast

¹⁶ Answer at 4.

¹⁷ *Id.* at 2.

¹⁸ *Id.* at n.9.

¹⁹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

²⁰ Answer at 5 (citing Order No. 890 FERC Stats. & Regs. ¶ 31,261 at P 1422; *MAPP*, 123 FERC ¶ 61,277 at P 33).

²¹ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 806.

Utilities assert that the Commission has previously found that a lottery approach for allocating transmission capacity within a submission window is appropriate for other transmission providers.²²

3. Commission Determination

20. We accept Duke Southeast Utilities' proposed amendments to sections 13.2, 28.4, and 30.2 of the Joint OATT, to become effective on June 1, 2015, as requested, subject to a compliance filing. In addition, we accept the proposed revisions to Schedule 9 effective April 1, 2015, as requested. We find that the proposed OATT amendments, as modified below, and the removal of a provision in Schedule 9 of the Joint OATT, are consistent with or superior to the *pro forma* OATT.

21. In Order No. 890, the Commission required those transmission providers who set a "no earlier than" time limit for transmission service requests to treat all such requests received within a specified period of time, or window, as having been received simultaneously.²³ The Commission also directed each transmission provider that has a simultaneous submission window to propose a method for allocating transmission capacity if sufficient capacity is not available to meet all requests submitted within that time period.²⁴ In Order No. 890-A, the Commission stated that, while it could remove transmission provider discretion by adopting a single, one-size-fits-all approach, such as a mandatory *pro rata* distribution methodology, this approach may not produce the best result in all cases. The Commission reiterated its finding that transmission providers are in the best position to determine which allocation mechanism works best for their systems.²⁵

22. Here, Duke Southeast Utilities have filed a proposal to implement a five-minute simultaneous submission window for transmission service requests and a lottery system for allocating transmission capacity when insufficient transfer capability exists to accommodate all transmission requests with otherwise equivalent priorities made within

²² Answer at 5-6 (citing *Bonneville Power Admin.*, 145 FERC ¶ 61,150, at P 142 (2013); *PacifiCorp*, 141 FERC ¶ 61,055, at P 8 (2012); *MAPP*, 123 FERC ¶ 61,177 at P 29)).

²³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at PP 1418-22.

²⁴ *Id.* PP 1370-71.

²⁵ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 806.

the submission window.²⁶ Such a system ensures that each customer that submitted bids within the five-minute window will have an equal opportunity to “win” the capacity, regardless of financial resources and sophistication.

23. Seminole asserts that, because it relies on both Duke Energy Florida and Florida Power for transmission services, Duke Southeast Utilities’ proposal is disruptive and will make it difficult to plan coherently. We note Seminole’s concern. However, not only is Duke Southeast Utilities’ proposal consistent with the requirements outlined in Order No. 890, but the Commission does not require neighboring transmission providers to adopt the same practices with regard to whether or not to have submission windows, and if so, the method for allocating capacity. As noted above, Duke Southeast Utilities, as the transmission provider, is in the best position to determine the appropriate allocation mechanism. Further, Duke Southeast Utilities are under no obligation to demonstrate that their proposed lottery is superior to Seminole’s preferred *pro rata* methodology.²⁷ In addition, similar to the approach in *MAPP* and as further discussed below, Duke Southeast Utilities’ Joint OATT designates reservation priorities that ensure that customers with identical duration, pre-confirmation status, and price whose bids are submitted within the five minute window will have an equal opportunity for the capacity regardless of financial resources and sophistication.²⁸ Accordingly, we find that Duke Southeast Utilities’ proposal to implement a simultaneous submission window and use a lottery system to allocate transmission capacity, as modified below, is reasonable and consistent with the requirements of Order No. 890.²⁹

24. However, while Duke Southeast Utilities’ proposed lottery system is generally consistent with the requirements of Order No. 890, we find that one aspect of Duke Southeast Utilities’ proposal lacks sufficient transparency. Specifically, in their Deficiency Response, Duke Southeast Utilities state that their approach “should be

²⁶ As noted, in the Deficiency Response, Duke Southeast Utilities clarify that, the Joint OATT reflects the priority system in the *pro forma* OATT. *See supra* n.9.

²⁷ While other reasonable approaches may exist, we find that Duke Southeast Utilities’ proposal is just and reasonable based on the record before us. *See Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995) (finding that under the FPA, as long as the Commission finds a methodology to be just and reasonable, that methodology “need not be the only reasonable methodology, or even the most accurate one”).

²⁸ *MAPP*, 123 FERC ¶ 61,177 at P 31.

²⁹ *See id.* P 29.

similar” to the approach that MAPP proposed and the Commission accepted.³⁰ While we agree with Duke Southeast Utilities that the Commission found that “under MAPP’s proposed lottery procedure, all customers with identical duration, pre-confirmation status and price status will be treated on an equal basis,” the Commission went on to find that “MAPP’s proposed tariff language does not clarify that the lottery applies only to allocation of capacity among remaining competing requests with the same queue position after priority has been assigned based on duration, pre-confirmed status, and price.”³¹ Accordingly, to ensure that reservation priorities under MAPP’s tariff were consistent with the *pro forma* OATT, the Commission directed MAPP to include in its tariff language clarifying its proposed simultaneous submission window as MAPP had provided in the transmittal letter to its filing.³² Similarly, while Duke Southeast Utilities state in their Deficiency Response that their lottery system “should be similar” to the approach accepted by the Commission in *MAPP*, they have not revised their tariff to clarify whether the lottery applies only to the allocation of capacity among remaining competing requests after priority has been assigned based on duration, pre-confirmed status, and price. Such clarification should provide the necessary transparency for Duke Southeast Utilities’ transmission customers to understand how and when the simultaneous submission window and lottery process will operate. Therefore, we require Duke Southeast Utilities to make a compliance filing, within 15 days of the date of this order, with revised tariff language to address this concern.

25. Accordingly, for the reasons stated above, we accept Duke Southeast Utilities’ proposed amendments to sections 13.2, 28.4, and 30.2 of the Joint OATT, to become effective on June 1, 2015, as requested, subject to a compliance filing. We also accept the proposed revisions to Schedule 9 effective April 1, 2015, as requested.³³

³⁰ Deficiency Response at 3 (citing *MAPP*, 123 FERC ¶ 61,177 at P 31).

³¹ *MAPP*, 123 FERC ¶ 61,177 at P 39.

³² *Id.* Specifically, MAPP’s transmittal letter provided that “[a]fter assigning priority to requests submitted within the [simultaneous submission window] based upon duration, pre-confirmed status and price, MAPP will allocate capacity among any remaining competing requests with the same queue time according to a lottery process.” *MAPP*, Transmittal, Docket No. OA07-51-001, at 4 (filed Nov. 30, 2007).

³³ We note that, if the software required to effectuate the lottery allocation system is not in place and fully functional to implement the amendments to sections 13.2, 28.4, and 30.2 of the Joint OATT on June 1, 2015, Duke Southeast Utilities must make a timely filing with revised tariff sheets, as appropriate, to ensure that their treatment of requests for transmission service is consistent with the filed tariff.

The Commission orders:

(A) Duke Southeast Utilities' proposed amendments to sections 13.2, 28.4, and 30.2 of the Joint OATT are accepted, effective June 1, 2015 as requested, subject to a compliance filing, as discussed in the body of this order.

(B) Duke Southeast Utilities' proposed revisions to Schedule 9 are accepted, effective April 1, 2015, as requested, as discussed in the body of this order.

(C) Duke Southeast Utilities are directed to submit a compliance filing, within 15 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose
Secretary.